

§ 245.4

and the School Food Authority has elected to provide free milk, or is a commodity-only school.

(Sec. 8, Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1758); sec. 5, Pub. L. 95-627, 92 Stat. 3619 (42 U.S.C. 1772); 42 U.S.C. 1785, 1766, 1772, 1773(e), sec. 203, Pub. L. 96-499, 94 Stat. 2599; secs. 807 and 808, Pub. L. 97-35, 95 Stat. 521-535, 42 U.S.C. 1772, 1784, 1760; sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[Amdt. 8, 40 FR 57207, Dec. 8, 1975; 40 FR 58281, Dec. 16, 1975, as amended by Amdt. 10, 41 FR 28783, July 13, 1976; Amdt. 13, 44 FR 33049, June 8, 1979; 47 FR 31852, July 23, 1982; 72 FR 63793, Nov. 13, 2007; 76 FR 22800, Apr. 25, 2011]

§ 245.4 Exceptions for Puerto Rico and the Virgin Islands.

Because the State agencies of Puerto Rico and the Virgin Islands provide free meals or milk to all children in schools under their jurisdiction, regardless of the economic need of the child's family, they are not required to make individual eligibility determinations or publicly announce eligibility criteria. Instead, such State agencies may use a statistical survey to determine the number of children eligible for free or reduced price meals and milk on which a percentage factor for the withdrawal of special cash assistance funds will be developed subject to the following conditions:

(a) State agencies shall conduct a statistical survey once every three years in accordance with the standards provided by FNS;

(b) State agencies shall submit the survey design to FNS for approval before proceeding with the survey;

(c) State agencies shall conduct the survey and develop the factor for withdrawal between July 1 and December 31 of the first school year of the three-year period;

(d) State agencies shall submit the results of the survey and the factor for fund withdrawal to FNS for approval before any reimbursement may be received under that factor;

(e) State agencies shall keep all material relating to the conduct of the survey and determination of the factor for fund withdrawal in accordance with the record retention requirements in § 210.8(e)(14) of this chapter;

(f) Until the results of the triennial statistical survey are available, the

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factor for fund withdrawal will be based on the most recently established percentages. The Department shall make retroactive adjustments to the States' Letter of Credit, if appropriate, for the year of the survey;

(g) If any school in these States wishes to charge a student for meals, the State agency, School Food Authority and school shall comply with all the applicable provisions of this part and parts 210, 215 and 220 of this chapter.

(Sec. 9, Pub. L. 95-166, 91 Stat. 1336 (42 U.S.C. 1759a); secs. 807 and 808, Pub. L. 97-35, 95 Stat. 521-535, 42 U.S.C. 1772, 1784, 1760; 44 U.S.C. 3506)

[Amdt. 18, 45 FR 52771, Aug. 8, 1980, as amended at 46 FR 51366, Oct. 20, 1981; 47 FR 746, Jan. 7, 1982]

§ 245.5 Public announcement of the eligibility criteria.

(a) After the State agency, or FNSRO where applicable, notifies the local educational agency (as defined in § 245.2) that its criteria for determining the eligibility of children for free and reduced price meals and for free milk have been approved, the local educational agency (as defined in § 245.2) shall publicly announce such criteria: *Provided however*, that no such public announcement shall be required for boarding schools, residential child care institutions (see § 210.2 of this chapter, definition of *Schools*), or a school which includes food service fees in its tuition, where all attending children are provided the same meals or milk. Such announcements shall be made at the beginning of each school year or, if notice of approval is given thereafter, within 10 days after the notice is received. The public announcement of such criteria, as a minimum, shall include the following:

(1) Except as provided in § 245.6(b), a letter or notice and application distributed on or about the beginning of each school year, to the parents of all children in attendance at school. The letter or notice shall contain the following information:

(i) In schools participating in a meal service program, the eligibility criteria for *reduced price* benefits with an explanation that households with incomes less than or equal to the reduced price criteria would be eligible for either free